

House Bill 444

By: Representatives Smith of the 113th, Rogers of the 26th, Stephens of the 164th, and Lewis of the 15th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 33 of the Official Code of Georgia Annotated, relating to investments of insurers, so as to provide for insurance tax credits for insurance companies which invest in venture capital schemes; to define certain terms; to provide for qualification; to provide for insurance tax credits; to provide for limitations on and allocations of insurance tax credits; to provide for qualified investments; to provide for fees, reports, and annual review; to provide for distributions; to provide for disqualification; to provide for transferability; to provide for rules and regulations; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 33 of the Official Code of Georgia Annotated, relating to investments of insurers, is amended by adding a new article to read as follows:

"ARTICLE 4

33-11-100.

As used in this article, the term:

(1) 'Affiliate' of a qualified fund, insurance company, or qualified business means:

(A) Any person directly or indirectly beneficially owning, whether through rights, options, convertible interests, or otherwise, controlling, or holding power to vote 15 percent or more of the outstanding voting securities or other voting ownership interests of the qualified fund, insurance company, or qualified business, as applicable;

(B) Any person 15 percent or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, whether through rights, options, convertible interests, or otherwise, controlled, or held with

1 power to vote by the qualified fund, insurance company, or qualified business, as
2 applicable;

3 (C) Any person directly or indirectly controlling, controlled by, or under common
4 control with the qualified fund, insurance company, or qualified business, as applicable;

5 (D) A partnership or limited liability company in which the qualified fund, insurance
6 company, or qualified business, as applicable, is a general partner, manager, or
7 managing member, as the case may be; or

8 (E) Any person who is an officer, director, employee, or agent of the qualified fund,
9 insurance company, or qualified business, as applicable, or an immediate family
10 member of such officer, director, employee, or agent.

11 (2) 'Allocation date' means the date on which the Commissioner allocates tax credits to
12 qualified investors of a qualified fund pursuant to Code Section 33-11-103.

13 (2.1) 'Commissioner of securities' means the commissioner of securities designated in
14 Code Section 10-5-10.

15 (3) 'Experienced investor' means an individual with at least four years of experience
16 making venture capital investments, which may include investments made in connection
17 with a state or federally sponsored venture capital program, as evidenced by the affidavit
18 required by paragraph (3) of subsection (a) of Code Section 33-11-101.

19 (4) 'Permissible investments' means investments which at the time of initial investment
20 are:

21 (A) Deposits with a financial institution that is a member of the Federal Deposit
22 Insurance Corporation;

23 (B) Certificates of deposit issued by a financial institution that is a member of the
24 Federal Deposit Insurance Corporation;

25 (C) Investment securities that are obligations of the United States, its agencies, or
26 instrumentalities or obligations that are guaranteed fully as to principal and interest by
27 the United States;

28 (D) Commercial paper rated at least A1, P1, or the equivalent by at least one nationally
29 recognized rating organization;

30 (E) Debt instruments rated at least 'AA' or the equivalent by a nationally recognized
31 rating organization or issued by, or guaranteed with respect to payment by, an entity
32 whose unsecured indebtedness is rated at least 'AA' or the equivalent by a nationally
33 recognized credit rating organization and which is not subordinated to other unsecured
34 indebtedness of the issuer or the guarantor, as the case may be;

35 (F) Obligations of this state, or any municipality in this state, or any political
36 subdivision thereof;

(G) Interests in money market funds or other mutual funds, the portfolios of which are limited to cash and permissible investments;

(H) Swaps or other hedging transactions with a counterparty rated at least 'A' or the equivalent by a nationally recognized rating agency designed to realize or protect the value of a qualified investment, or both; or

(I) Any other investments approved in advance and in writing by the commissioner of securities.

(5) 'Person' means any natural person, corporation, general or limited partnership, trust, limited liability company, or other entity.

(6) 'Qualified business' means a business that meets all of the following conditions as of the time of a qualified fund's first investment in such business:

(A) It is headquartered and has its principal business operations located in this state and intends to maintain its headquarters and principal business operations in this state after receipt of the qualified fund's investment, or has its headquarters and principal business operations located in another state and relocates its headquarters and principal business operations to this state within 90 days after receipt of the qualified fund's investment;

(B) It is a small business concern that meets the requirements of the U.S. Small Business Administration's qualification size standards for its venture capital program, as specified in subsection (c) of 13 C.F.R. 121.301;

(C) It is not predominantly engaged in any of the following:

(i) The purchase or development of real estate for resale or solely for investment purposes;

(ii) The business of insurance, banking, lending, lobbying, or political consulting; or

(iii) The provision of professional services provided by accountants, attorneys, or physicians;

(D) It is not:

(i) Formed or organized, directly or indirectly, by a qualified fund or an affiliate of such qualified fund;

(ii) A franchisee of a qualified fund or an affiliate of such qualified fund; or

(iii) Before the date on which a qualified fund makes its first investment in such business, an affiliate of such qualified fund; and

(E) It does not have any financial relationship with a qualified fund before the date on which such qualified fund makes its first investment.

(7) 'Qualified capital' means an investment of cash by a qualified investor in a qualified fund which fully funds the purchase price of an equity interest in the qualified fund or a qualified debt instrument issued by the qualified fund.

1 (8) 'Qualified debt instrument' means a debt instrument issued to a qualified investor by
2 a qualified fund which has the following characteristics:

3 (A) An original maturity date of at least five years from date of issuance;

4 (B) An issue price to the qualified investor of at least par value;

5 (C) A repayment schedule which is no faster than a level principal amortization over
6 five years;

7 (D) Does not permit the qualified investor to receive prepayment of interest; and

8 (E) Contains no interest, distribution, or payment features that are related to the
9 profitability of the qualified fund or the performance of the qualified fund's investment
10 portfolio until such time as the qualified fund is permitted to make distributions, other
11 than qualified distributions, under Code Section 33-11-106.

12 (9) 'Qualified distribution' means any distribution or payment from qualified capital or
13 profits earned thereon in connection with any of the following:

14 (A)(i) Costs and expenses of forming, organizing, and syndicating the qualified fund;

15 (ii) The costs of financing, defeasing, and insuring the obligations of the qualified
16 fund under its qualified debt instrument; and

17 (iii) An amount equal to 2.5 percent of the qualified capital of the qualified fund,
18 which amount represents the qualified fund's first annual management fee, which
19 management fee may be distributed by the qualified fund at any time after the
20 allocation date and before the first anniversary of the allocation date, so long as, at the
21 time the qualified fund initially received its investment of qualified capital from its
22 qualified investors, the qualified fund has cash or permissible investments available
23 for investment in qualified businesses equal to at least 50 percent of the amount of
24 qualified capital such qualified fund initially received as investment from its qualified
25 investors;

26 (B) From and after the first anniversary of the allocation date, an annual management
27 fee in an amount that does not exceed 2.5 percent of the qualified capital of the
28 qualified fund, which amount shall be applied to the costs and expenses of managing
29 and operating the qualified fund; provided that no such cost or expense shall be paid to
30 a qualified investor or an affiliate of a qualified investor; and provided, further, that
31 after the seventh anniversary of the allocation date, the annual management fee shall
32 not exceed 1.5 percent of the qualified capital of the qualified fund and after the tenth
33 anniversary of the allocation date, no annual management fee shall be permitted; and

34 (C) Any projected increase in federal or state taxes, excluding penalties and interest
35 related to state and federal income taxes, of the equity owners of a qualified fund
36 resulting from the earnings or other tax liability of the qualified fund without regard to
37 any revenues or expenses from other operations of affiliates of the qualified fund, to the

1 extent that the increase is related to the ownership, management, or operation of a
2 qualified fund or issuance, repayment, or redemption of the qualified debt instruments
3 of the qualified fund.

4 (10) 'Qualified fund' means a partnership, corporation, trust, or limited liability company,
5 whether organized on a for profit or not for profit basis, that has as its primary business
6 activity the investment of cash in qualified businesses and that is approved as a qualified
7 fund by the commissioner of securities by meeting the requirements of subsection (a) of
8 Code Section 33-11-101.

9 (11) 'Qualified investment' means the investment of cash by a qualified fund in a
10 qualified business for the purchase of any debt, debt participation, equity, or hybrid
11 security, of any nature and description whatsoever, including a debt instrument or
12 security which has the characteristics of debt but which provides for conversion into
13 equity or equity participation instruments such as options or warrants. Any qualified
14 investment in the form of a debt instrument, including those owned through debt
15 participations, must have a final stated maturity of at least one year from the date of
16 issuance and a repayment schedule that is no faster than level principal amortization over
17 the same period, and any qualified investment in the form of equity or equity
18 participation instruments may not provide from the mandatory redemption or repurchase
19 of such investment by the qualified business prior to one year after the date of such
20 investment. Nothing in this paragraph shall prohibit:

21 (A) The qualified business from voluntarily prepaying, redeeming, or repurchasing
22 qualified investment at any time; or

23 (B) The qualified fund from exercising any of its rights and remedies following a
24 default in the obligations of the qualified business, including the acceleration of the
25 debt or redemption or repurchase obligations owed upon a default by the qualified
26 business under the terms of the qualified investment or upon the acquisition, merger,
27 or sale of all or substantially all of the assets of the qualified business.

28 (12) 'Qualified investor' means any insurance company that invests qualified capital
29 pursuant to an allocation of tax credits under Code Section 33-11-103.

30 (13) 'State premium tax liability' means any liability incurred by an insurance company
31 under the provisions of Code Section 33-8-4 or, in the case of a repeal or reduction by the
32 state of the tax imposed by such Code section, any other tax imposed upon an insurance
33 company by this state.

34 (14) 'Tax credit' means the vested credit against state premium tax liability that is earned
35 at the time of investment by a qualified investor in connection with an investment of
36 qualified capital in a qualified fund pursuant to this article.

(15) 'Tax credit allocation claim' means a claim for allocation of tax credits prepared and executed by an insurance company on a form provided by the Commissioner and filed by a qualified fund with the Commissioner. The form shall include an affidavit of the insurance company pursuant to which such insurance company:

(A) Is legally bound and irrevocably committed to make an investment of qualified capital in a qualified fund in the amount of allocated tax credits even if such amount is less than the amount of the claim, subject only to the receipt of an allocation pursuant to Code Section 33-11-103; and

(B) Complies with the requirements of subsection (d) of Code Section 33-11-101 and subsection (f) of Code Section 33-11-103.

(16) 'Tax credit allocation claim filing date' means the date on which the Commissioner will first accept tax credit allocation claims on behalf of qualified investors.

33-11-101.

(a) The commissioner of securities shall approve as a qualified fund an applicant that meets the following requirements:

(1) The applicant has paid a nonrefundable application fee of \$15,000.00 at or before the date of filing its application with the commissioner of securities;

(2) The applicant's equity capitalization at the date of filing its application with the commissioner of securities must be at least \$500,000.00 and must be in the form of unencumbered cash or cash equivalents. As part of its application, each applicant shall submit to the Commissioner:

(A) Its audited balance sheet as of a date no more than 35 days prior to the date of filing its application with an unqualified opinion from an independent certified public accountant; and

(B) An affidavit stating that, if approved as a qualified fund, it will maintain an equity capitalization of at least \$500,000.00, except for reductions due to qualified distributions, until the allocation date;

(3) At least two of the applicant's principals or at least two persons employed by or engaged by the applicant to manage the applicant's funds qualify as experienced investors. As part of its application, each applicant shall submit to the commissioner of securities an affidavit from each experienced investor:

(A) Stating that such person qualifies as an experienced investor;

(B) Attaching such person's detailed resume or equivalent biographic material; and

(C) Stating that such person has not violated federal or state securities or banking laws or been convicted of any crime involving fraud; and

(4) The applicant submits with its application an affidavit stating that, within 60 days after the investment of qualified capital in the qualified fund, at least one investment professional employed by or engaged by the qualified fund to manage the qualified fund's assets be primarily located in an office of the qualified fund based in this state.

(b) Within 30 days of the receipt of an application, the Commissioner shall either approve the applicant as a qualified fund or refuse to so approve the applicant; and in the case of a refusal, the Commissioner shall specifically communicate to the applicant the requirements of subsection (a) of this Code section the applicant failed to satisfy. An applicant may file an amended application 15 days of receipt of refusal by the commissioner of securities. Within 15 days from the receipt of such amended application, the commissioner of securities shall either approve the applicant as a qualified fund or refuse to so approve the applicant. The commissioner of securities shall review applications in the order received, and in the event more than one application is received by the commissioner of securities on the same day, all such applications shall be reviewed simultaneously, except in the case of incomplete applications.

(c)(1) As part of the application, an applicant shall provide the commissioner of securities with copies of either:

(A) Its offering materials, which may be in draft or preliminary form; or

(B) Other information that describes in reasonable detail the structure of its qualified debt instruments and any other securities to be issued to its qualified investors so that the commissioner of securities may verify the qualified fund's compliance with the requirements of paragraphs (7) and (10) of Code Sections 33-11-100 and, if applicable, the inclusion of the statement set forth in paragraph (2) of this subsection.

(2) Any offering material involving the sale of securities of the qualified fund shall include the following statement:

'By authorizing the formation of a qualified fund, the state does not necessarily endorse the quality of management or the potential for earnings of such company and is not liable for damages or losses to a qualified investor in the company. Use of the word "qualified" in an offering does not constitute a recommendation or endorsement of the investment by the commissioner of securities. In the event applicable provisions of Article 4 of Chapter 11 of Title 33 of the O.C.G.A. are violated, the state may require forfeiture of unused tax credits and repayment of used tax credits.'

(d) No insurance company or any affiliate of an insurance company shall, directly or indirectly, beneficially own, whether through rights, options, convertible interests, or otherwise, 15 percent or more of the voting equity interests of or manage a qualified fund or control the direction of investments for a qualified fund. This provision shall not preclude a qualified investor, insurance company, or any other party from:

(1) Exercising its legal rights and remedies, which may include interim management of a qualified fund or ownership of equity interests in excess of the limits contained herein, in the event that a qualified fund is in default of its statutory obligations or its contractual obligations to a qualified investor, insurance company, or other person; or

(2) Establishing controls to insure that the qualified fund satisfies the requirements of subsection (a) of Code Section 33-11-104. Nothing in this subsection shall limit an insurance company's ownership of nonvoting equity securities or other nonvoting ownership interests of a qualified fund.

(e) A qualified fund may obtain a guaranty, indemnity, bond, insurance policy or other payment undertaking for the benefit of its qualified investors from any entity; provided, however, that, in no case shall more than one qualified investor of such qualified fund or affiliates of such qualified investor be entitled to provide such guaranty, indemnity, bond, insurance policy or other payment undertaking in favor of the qualified investors of the qualified fund and its affiliates in this state.

33-11-102.

(a) Any qualified investor who makes an investment of qualified capital pursuant to an allocation of tax credits under Code Section 33-11-103 shall, at the time of investment, earn a vested credit against state premium tax liability equal to 100 percent of the qualified investor's investment of qualified capital. A qualified investor shall be entitled to use to 10 percent of the vested tax credit earned by the qualified investor's investment to reduce the qualified investor's state premium tax liability for any tax year of the qualified investor beginning with the year during which the investment of qualified capital is made, plus any amount of unused tax credits carried forward pursuant to subsection (b) of this Code section.

(b) The tax credit that may be applied against state premium tax liability in any one tax year may not exceed the state premium tax liability of the qualified investor for such tax year. All unused tax credits against state premium tax liability may be carried forward indefinitely and used in any subsequent year until the tax credits are utilized in full.

(c) A qualified investor using a tax credit against state premium tax liability earned through an investment in a qualified fund shall not be required to pay any additional retaliatory tax levied as a result of using that tax credit.

(d) A qualified investor is not required to reduce the amount of tax pursuant to the state premium tax liability included by the qualified investor in connection with rate making for any insurance contract written in this state because of a reduction in the qualified investor's state premium tax liability based on the tax credit allowed under this article.

(e) If the taxes paid by a qualified investor with respect to its state premium tax liability constitute a credit against any other tax which is imposed by this state, the qualified investor's credit against such other tax shall not be reduced by virtue of the reduction in the qualified investor's state premium tax liability based on the tax credit allowed under this article.

33-11-103.

(a) The maximum aggregate amount of tax credits that shall be allocated to all qualified investors under this article is equal to \$75 million. No qualified fund, on an aggregate basis with its affiliates, may file tax credit allocation claims that exceed such maximum aggregate amount.

(b) Tax credits shall be allocated to qualified investors in the order that the tax credit allocation claims are filed with the Commissioner. All tax credit allocation claims filed with the Commissioner on the same day shall be treated as having been filed contemporaneously. Any tax credit allocation claims filed with the Commissioner prior to the tax credit allocation claim filing date shall be deemed to have been filed on the tax credit allocation claim filing date.

(c)(1) In the event that two or more qualified funds file tax credit allocation claims with the Commissioner on behalf of their respective qualified investors on the same day, and the aggregate amount of such tax credit allocation claims exceeds the maximum aggregate limit of tax credits under subsection (a) of this Code section or such lesser amount of tax credits that remain unallocated on such day, then the tax credits shall be allocated among the qualified investors who filed on that day on a pro rata basis with respect to the amounts claimed. Except as provided in paragraph (2) of this subsection, the pro rata allocation for any one qualified investor shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the tax credit allocation claim filed on behalf of such qualified investor and the denominator of which is the total of all tax credit allocation claims filed on behalf of all qualified investors on such day, by the maximum aggregate limit of tax credits under subsection (a) of this Code section or such lesser amount of tax credits that remain unallocated on such day.

(2) No tax credits shall be allocated to the qualified investors of a qualified fund if the allocation would result in less than 10 percent of the maximum aggregate limit of tax credits under subsection (a) of this Code section being allocated to the qualified investors of such qualified fund in the aggregate.

(3) If none of the qualified investors of a qualified fund that filed tax credit allocation claims receive an allocation of tax credits as a result of the operation of paragraph (2) of this subsection, the pro rata allocation to be made pursuant to paragraph (1) of this

subsection, among the qualified investors of the other qualified funds that filed tax credit allocation claims shall be made as if no tax credit allocation claim was ever filed on behalf of the qualified investors who did not receive an allocation of tax credits as a result of the operation of paragraph (2) of this subsection .

(d) Within ten business days after the Commissioner receives a tax credit allocation claim filed by a qualified fund on behalf of one or more of its qualified investors, the Commissioner shall notify the qualified fund of the amount of tax credits allocated to each of the qualified investors of such qualified fund.

(e)(1) In the event a qualified fund does not receive aggregate investments of qualified capital equaling the amount of tax credits allocated to its qualified investors within ten business days of the qualified fund's receipt of notice of allocation, then it shall so notify the Commissioner on or before the next business day and that portion of the tax credits allocated to the qualified investors of such qualified fund in excess of the amount of qualified capital invested in such qualified fund by such date will be forfeited. The Commissioner shall then reallocate those forfeited tax credits among the qualified investors of the other qualified funds on a pro rata basis with respect to the tax credit allocation claims filed on behalf of such qualified investors.

(2) In the event a qualified fund does not receive investments of qualified capital in the aggregate equaling or exceeding 10 percent of the maximum amount of qualified capital for which tax credits will be allocated under subsection (a) of this Code section within ten business days of the qualified fund's receipt of notice of allocation, then, at the discretion of the Commissioner, all of the tax credits allocated to the qualified investors of that qualified fund may be forfeited. If forfeited, the Commissioner shall reallocate those tax credits among the qualified investors of the other qualified funds on a pro rata basis with respect to the tax credit allocation claims filed on behalf of such qualified investors.

(f) The maximum amount of tax credit allocation claims that may be filed on behalf of any one qualified investor, on an aggregate basis with its affiliates, in one or more qualified funds shall not exceed 15 percent of the aggregate limitation as provided in subsection (a) of this Code section.

33-11-104.

(a) In order to continue to qualify as a qualified fund, a qualified fund must make qualified investments according to the following schedule:

(1) Within the period ending three years after its allocation date, a qualified fund must have made qualified investments cumulatively equal to at least 30 percent of its qualified capital; and

(2) Within the period ending five years after its allocation date, a qualified fund must have made qualified investments cumulatively equal to at least 50 percent of its qualified capital; and

(b) A qualified fund shall make qualified investments in an amount cumulatively equal to at least one 100 percent of its qualified capital prior to making any distribution other than:

(1) Qualified distributions; and

(2) Payments of principal and interest on its indebtedness without restriction, including payments of indebtedness of the qualified fund on which qualified investors earned tax credits.

(c)(1) The aggregate cumulative amount of all qualified investments made by the qualified fund from its allocation date shall be considered in the calculation of any of the percentage requirements under this article. Any funds received from a qualified investment may be invested in another qualified investment and shall count toward any requirement in this article with respect to investments of qualified capital.

(2) Notwithstanding paragraph (1) of this subsection, any amounts received by a qualified fund from a qualified business as:

(A) Commitment fees, closing fees, or other similar fees in excess of 1 percent of the qualified fund's investment in the qualified business; or

(B) License fees, royalties, or similar charges

shall not be considered in the calculation of any of the percentage requirements under this article.

(3) Notwithstanding paragraph (1) of this subsection, in the event that a qualified fund makes a qualified investment that is guaranteed, in whole or in part, by any federal, state, or other governmental entity, then the guaranteed portion of any such investment shall not be considered in the calculation of any of the percentage requirements under this article.

(4) Notwithstanding paragraph (1) of this subsection, in the event that a qualified business relocates its headquarters or principal business operations to a state other than this state within six months of the first investment in the business by a qualified fund, then for the purpose of determining whether the qualified fund has met the requirements of subsection (b) of this Code Section, the aggregate cumulative amount of all qualified investments made by the qualified fund from its allocation date shall be calculated as if such investment had not been made; provided, however, that this subsection shall not apply if the relocation was a result of the acquisition, whether by merger, consolidation, or other form of reorganization, of the qualified business or the acquisition or sale of all or substantially all of the assets of the qualified business by a third party that is not an affiliate of either the qualified business or the qualified fund who made the qualified

investment; and provided, further, that this subsection shall not apply once a qualified fund has made qualified investments as required by subsection (b) of this Code section.

(d) Any business which is classified as a qualified business at the time of the first investment in such business by a qualified fund shall remain classified as a qualified business and may receive follow-on investments from any qualified fund; and such follow-on investments shall be qualified investments even if such business may not meet the definition of a qualified business at the time of such follow-on investments.

(e) An investment shall not be a qualified investment if the aggregate investment by the qualified fund in the qualified business following such investment would exceed 15 percent of the total qualified capital of the qualified fund at the time of investment.

(f) Prior to making a proposed investment in a specific business, a qualified fund shall request from the commissioner of securities a written opinion stating that the proposed investment will constitute a qualified investment in a qualified business. The commissioner of securities shall have 15 days from the receipt of such a request to determine whether the proposed investment meets the definition of a qualified investment and whether the business is a qualified business. The commissioner of securities shall notify the qualified fund of his or her determination and an explanation thereof. If the commissioner of securities fails to notify the qualified fund of such determination within the 15 day period, the proposed investment shall be deemed to be a qualified investment in a qualified business. If the commissioner of securities determines that the proposed investment does not meet the definition of a qualified investment or if the business does not meet the definition of a qualified business, the commissioner of securities is expressly granted the authority to:

(1) Deem the proposed investment a qualified investment and the business a qualified business; and

(2) Approve the investment

if the commissioner of securities determines that the proposed investment would further the intent of this article and the economic development of the state.

(g) All qualified capital held by the qualified fund and not currently invested in qualified investments by the qualified fund must be invested in permissible investments. This subsection shall not apply to securities received by a qualified fund in exchange for a qualified investment prior to the conversion of such securities into cash or cash equivalents.

33-11-105.

(a) Each qualified fund shall pay to the commissioner of securities an annual, nonrefundable qualification fee of \$5,000.00 on or before January 31, or \$10,000.00 if

1 later; provided, however, that no such fee shall be required within six months of the date
2 a qualified fund is first approved as such by the commissioner of securities.

3 (b) Each qualified fund shall report the following to the commissioner of securities:

4 (1) Within 30 days after the receipt of qualified capital:

5 (A) The name of each qualified investor from which the qualified capital was received,
6 including such qualified investor's insurance premium tax identification number;

7 (B) The amount of each qualified investor's investment of qualified capital and tax
8 credits; and

9 (C) The date on which the qualified capital was received;

10 (2) On an annual basis, on or before January 31:

11 (A) The amount of the qualified fund's qualified capital as of December 31 of the
12 immediately preceding year;

13 (B) Whether the qualified fund has invested more than 15 percent of its total qualified
14 capital in any one qualified business;

15 (C) A description of all qualified investments that the qualified fund made during the
16 previous calendar year; and

17 (D) A report on the number of persons employed by each qualified business in which
18 the qualified fund maintains a qualified investment; and

19 (3) Within 90 days of the close of such qualified fund's fiscal year, annual audited
20 financial statements which shall include the opinion of an independent certified public
21 accountant regarding the financial statements.

22 (c) The commissioner of securities shall conduct an annual review of each qualified fund
23 to determine if the qualified fund is in compliance with this article. The cost of the annual
24 review shall be paid by each qualified fund according to a reasonable fee schedule adopted
25 by the commissioner of securities.

26 33-11-106.

27 Once a qualified fund has made qualified investments as required by subsection (b) of
28 Code Section 33-11-104, the qualified fund may make distributions to its equity owners;
29 provided, however, that after returning all nonqualified equity capital invested into the
30 qualified fund, including a qualified fund's initial \$500,000.00 equity contribution required
31 by paragraph (2) of subsection (a) of Code Section 33-11-101 plus the qualified fund's
32 original qualified capital, each qualified fund shall pay 20 percent of all distributions, other
33 than qualified distributions and payments of principal and interest on its indebtedness, to
34 the state.

1 33-11-107.

2 (a) Any intentional misstatement of material fact in a qualified fund's application for
3 qualification or any material violation of Code Section 33-11-104 or 33-11-105 shall be
4 grounds for disqualification of the qualified fund subject to the notice and grace period
5 provided for in this subsection. If the commissioner of securities determines that a
6 qualified fund intentionally misstated a material fact in its application for qualification or
7 materially violated the requirements of Code Section 33-11-104 or 33-11-105, then the
8 commissioner of securities shall inform the officers of the qualified fund in writing that the
9 qualified fund may be subject to disqualification 120 days from the date of mailing of the
10 notice unless the deficiencies are corrected and the qualified fund is again in compliance
11 with all requirements for qualification. At the end of the 120 day period, if the qualified
12 fund is still in material noncompliance with Code Section 33-11-104 or 33-11-105, the
13 commissioner of securities may send a notice of disqualification to the qualified fund and
14 to all other appropriate state agencies, including without limitation the Commissioner.

15 (b) Disqualification of a qualified fund may cause the recapture of tax credits previously
16 claimed and the forfeiture of future tax credits to be claimed by qualified investors with
17 respect to such qualified fund, as follows:

18 (1) Disqualification of a qualified fund within three years of its allocation date and prior
19 to its satisfaction of paragraph (1) of subsection (a) of Code Section 33-11-104 shall
20 cause the recapture of all tax credits previously used and the forfeiture of all future tax
21 credits to be used by such qualified fund's qualified investors;

22 (2) When a qualified fund meets all requirements for continued qualification under
23 paragraph (1) of subsection (a) of Code Section 33-11-104 and subsequently fails to meet
24 the requirements for continued qualification under the provisions of paragraph (2) of
25 subsection (a) of Code Section 33-11-104, and is subsequently disqualified, the first three
26 annual tax credits which have been or will be used by such qualified fund's qualified
27 investors shall not be subject to recapture or forfeiture; provided, however, all other tax
28 credits that have been or will be used by such qualified fund's qualified investors shall
29 be subject to recapture or forfeiture;

30 (3) Once a qualified fund has met all requirements for continued qualification under
31 subsection (a) of Code Section 33-11-104, and is subsequently disqualified, the first five
32 annual tax credits which have been or will be used by such qualified fund's qualified
33 investors shall not be subject to recapture or forfeiture. Subsequent tax credits to be used
34 by such qualified fund's qualified investors shall be subject to forfeiture only if the
35 qualified fund is disqualified within five years after its allocation date; and

36 (4) Notwithstanding anything to the contrary in this subsection, at such time as a
37 qualified fund has made qualified investments as required by subsection (b) of Code

1 Section 33-11-104, all tax credits which have been or will be used by such qualified
2 fund's qualified investors shall no longer be subject to recapture or forfeiture, provided
3 the qualified fund has met all requirements for continued qualification under subsection
4 (a) of Code Section 33-11-104.

5 (c) The Commissioner shall send written notice to the address of each qualified investor
6 whose tax credits have been subject to recapture or forfeiture at such qualified investor's
7 address shown on such qualified investor's last premium tax filing. The Commissioner is
8 expressly granted the authority to waive any recapture or forfeiture of tax credits if, after
9 considering all facts and circumstances, he or she determines that such waiver will have
10 the effect of advancing state economic development.

11 (d) Once a qualified fund has made qualified investments as required by subsection (b) of
12 Code Section 33-11-104, the qualified fund shall no longer be subject to regulation by the
13 commissioner of securities except for the requirements of Code Section 33-11-106.

14 (e) If a qualified fund certifies to the commissioner of securities its good faith belief that
15 it has complied with the provisions of subsection (a) of Code Section 33-11-104 and
16 subsection(d) of Code Section 33-11-107, then the commissioner of securities shall, within
17 30 days of receipt of such qualification, conduct a review of the qualified investments of
18 the qualified fund and shall certify in writing to the qualified fund whether the qualified
19 fund has complied with such provisions. The qualified fund shall pay the costs of the
20 review according to a reasonable fee schedule adopted by the commissioner of securities.

21 33-11-108.

22 After the date qualified investors are first entitled to apply tax credits against their state
23 premium tax liability, the tax credits earned pursuant to this article may be transferred or
24 sold to any other person with state premium tax liability. Prior to such date, the tax credits
25 may only be transferred or sold to a person who:

- 26 (1) Is an affiliate of the qualified investor transferring or selling the tax credits; or
27 (2) Through the voluntary sale, assignment, or other transfer of the business or control
28 of the business of the qualified investor, including the sale or other transfer of stock or
29 assets by merger, consolidation, or dissolution, succeeds to all or substantially all of the
30 business or property of the qualified investor.

31 Any such transfer or sale shall not affect the time schedule for taking the tax credit as
32 provided in this article. Any tax credits recaptured pursuant to Code Section 33-11-107
33 shall be the liability of the taxpayer that actually claimed the tax credits.

1 33-11-109.

2 The commissioner of securities and the Commissioner, respectively, shall make and
3 promulgate such rules and regulations and adopt the forms, including the application for
4 qualification, necessary to efficiently and expeditiously implement this article within 150
5 days of the effective date of this article. The rules of the commissioner of securities shall
6 provide that the commissioner of securities shall begin accepting applications for
7 qualification as a qualified fund not later than 180 days after the effective date of this
8 article. The rules of the Commissioner shall provide that the tax credit allocation claim
9 filing date shall be the first business day following 90 days after the date on which the
10 commissioner of securities first accepts applications for qualification as a qualified fund."

11 **SECTION 2.**

12 This Act shall become effective upon its approval by the Governor or upon its becoming law
13 without such approval.

14 **SECTION 3.**

15 All laws and parts of laws in conflict with this Act are repealed.